

COURT OF APPEALS  
LICKING COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

TIMOTHY EDMOND

Defendant-Appellant

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JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. William B. Hoffman, J.

Hon. Sheila G. Farmer, J.

Case No. 14-CA-42

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Municipal Court,  
Case No. 14TRD00330

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

February 11, 2015

APPEARANCES:

For Plaintiff-Appellee

TRICIA M. MOORE  
40 West Main Street  
Newark, OH 43055

For Defendant-Appellant

ERIN J. McENANEY  
23½ South Park Place  
Suite 207D  
Newark, OH 43055

*Farmer, J.*

{¶1} On December 26, 2013, appellant, Timothy Edmond, was charged with driving under suspension and going left of center. Appellant appeared in Pataskala Mayor's Court where the case was transferred to the Licking County Municipal Court.

{¶2} On January 22, 2014, appellant filed a motion to suppress and motion to dismiss or motion to remand to Mayor's Court. A hearing was held on March 5, 2014. By judgment entry filed April 14, 2014, the municipal court denied appellant's motions.

{¶3} A bench trial commenced on May 7, 2014. By judgment of conviction filed same date, the municipal court found appellant guilty and imposed a total fine of \$175.00.

{¶4} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶5} "THE COURT FAILED TO ARRAIGN THE DEFENDANT-APPELLANT IN ACCORDANCE WITH TRAFFIC RULE 8 THEREFORE DENYING HIM HIS RIGHT TO DUE PROCESS UNDER THE OHIO AND UNITED STATES CONSTITUTION."

I

{¶6} Appellant claims he was never formally arraigned on the charges pursuant to Traf.R. 8; therefore, he was denied due process of law under the Ohio and United States Constitutions. We disagree.

{¶7} Traf.R. 8 governs arraignment. Subsections (A), (B), and (D) state the following:

**(A) Arraignment time**

Where practicable, every defendant shall be arraigned before contested matters are taken up. Trial may be conducted immediately following arraignment.

**(B) Arraignment procedure**

Arraignment shall be conducted in open court and shall consist of reading the complaint to the defendant, or stating to him the substance of the charge, and calling on him to plead thereto. The defendant shall be given a copy of the complaint, or shall acknowledge receipt thereof, before being called upon to plead and may in open court waive the reading of the complaint.

**(D) Explanation of rights**

Before calling upon a defendant to plead at arraignment the judge shall cause him to be informed and shall determine that defendant knows and understands:

(1) That he has a right to counsel and the right to a reasonable continuance in the proceedings to secure counsel, and, pursuant to Criminal Rule 44, the right to have counsel assigned without cost to himself if he is unable to employ counsel;

(2) That he has a right to bail as provided in Rule 4;

(3) That he need make no statement at any point in the proceeding; but any statement made may be used against him;

(4) That he has, where such right exists, a right to jury trial and that he must, in petty offense cases, make a demand for a jury pursuant to Criminal Rule 23;

(5) That if he is convicted a record of the conviction will be sent to the Bureau of Motor Vehicles and become part of his driving record.

{¶8} Appellant was charged with driving under suspension and going left of center and was summoned to appear at Pataskala Mayor's Court. On January 10, 2014, the case was transferred to the Licking County Municipal Court. The judgment entry to transfer noted "Defendant has demanded a trial by Jury/Judge. A letter from the Mayor's Court to the municipal court stated the following in part:

Mr. Edmond **has not been arraigned**. He was scheduled to appear in court on January 2, 2014 and did not appear. A lady called claiming to be his Health Care Aid, said he only had one leg, and said she could not drive him to Pataskala from Newark because the roads were too bad. We rescheduled the case for January 9, 2014.

Mr. Edmond did appear on January 9, 2014 (without anyone Aid with him) however he would not sign the Notice of Rights form. The Magistrate decided to transfer his case to LCMC. Mr. Edmond became very argumentative and disrespectful to the Magistrate.

He also refused to sign a Recog. Bond for the transfer and then became very argumentative and disrespectful to the Police Officer who

serves as the Court's Bailiff. The Officer was going to arrest him for his actions in court but the Magistrate told the Officer not to arrest him, just to get him out of the court room.

{¶9} After the matter had been set for trial in the municipal court, appellant filed a motion to suppress/dismiss or remand to Mayor's Court on January 22, 2014, stating the following in part:

4. Mr. Edmond appeared in Mayor's court to address these issues as requested per the summons issued. Mr. Edmond was not allowed to Plead or even respond to the allegations'. Mr. Edmond was further discriminated by being, kicked out of the room by an armed officer and then Mr. Edmond asked for an Audio recording of the mayor's court session he was told "The Mayor's Court does not make Audio Recordings". Mr. Edmond was further threatened to be arrested if he did not sign a bond sheet in which I totally refused.

5. These charges should be dismissed for the city of Pataskala's illegal transfer of this case.

7. There was no purpose to transfer but for the City of Pataskala's deliberate attempt to harass and Discriminate Mr. Edmond by prosecutable prejudice.

{¶10} R.C. 1905.032 governs transfer of cases and states the following:

(A) If a person who is charged with a violation of a law or an ordinance is brought before a mayor's court and the violation charged is not within the jurisdiction of the court, as set forth in section 1905.01 of the Revised Code, the mayor promptly shall transfer the case to the municipal court, county court, or court of common pleas with jurisdiction over the alleged violation and shall require the person to enter into a recognizance to appear before that court.

If a person who is charged with a violation of a law or an ordinance is brought before a mayor's court and the violation charged is within the jurisdiction of the court, as set forth in section 1905.01 of the Revised Code, the mayor, at any time prior to the final disposition of the case, may transfer it to the municipal court, county court, or court of common pleas with concurrent jurisdiction over the alleged violation. If a mayor transfers a case under this provision, the mayor shall require the person charged to enter into a recognizance to appear before the court to which the case is transferred.

{¶11} The Mayor's Court had the authority to transfer the case to the municipal court under R.C. 1905.032.

{¶12} Following a hearing on appellant's motions, the municipal court denied the motions on April 14, 2014.

{¶13} Prior to the commencement of the bench trial, the following exchange occurred between appellant and the municipal court (T. at 4-5):

MR. EDMOND: Did I waive my right to an Arraignment at some point in time because I haven't been arraigned on this case yet and we're already here for Trial.

THE COURT: Well as a matter of procedure upon the receipt of the transfer from the Pataskala Mayor's Court the Court considers that to be a not-guilty plea. The Court finds that absolutely no rights of the Defendant would be violated or infringed upon by asserting his innocence denying the charges and forcing the State to meet its burden by proof beyond a reasonable doubt. So any objections based on lack of arraignment are hereby overruled. Anything further Mr. Edmond.

MR. EDMOND: Yes. Even though the Court ruled in the Suppression Motion that it wasn't an issue that this case was transferred even though I didn't ask for it to be transferred. Is that the Court's opinion?

THE COURT: Mr. Edmond I've already ruled on all the matters that you're bringing up. Do you have anything new that we need to address before we get started?

{¶14} From the record forwarded by the Mayor's Court to the municipal court as cited above, it appears appellant refused to plea at his initial appearance; therefore,

Traf.R. 10(A) is applicable. Subsection (A) states in part: "If a defendant refuses to plead, the court shall enter a plea of not guilty on behalf of the defendant."

{¶15} It is also apparent in the record that the municipal court afforded appellant due process by holding a suppression hearing, ordering discovery, and granting his request for a continuance of his trial date. We find the record does not indicate a violation of appellant's due process rights.

{¶16} The sole assignment of error is denied.

{¶17} The judgment of the Municipal Court of Licking County, Ohio is hereby affirmed.

By Farmer, J.

Gwin, P.J. concurs and

Hoffman, J. concurs separately.



*Hoffman, J., concurring*

{¶18} I concur in the majority's disposition of Appellant's assignment of error.

{¶19} While I readily agree Traf.R. 10(A) allows the trial court to enter a not guilty plea on a defendant's behalf if the defendant refuses to plea, I do not believe such serves to alleviate the necessity of advising a defendant according to Traf.R. 8. While the letter from the Mayor's Court to the municipal court acknowledges Appellant was not arraigned in municipal court, that does not answer the question as to whether he was advised in accordance with Traf.R. 8 prior to the trial court's entering a plea of not guilty.

{¶20} Nevertheless, I agree with the majority's decision to affirm the trial court's judgment. Appellant argues in his brief he was not arraigned pursuant to Traf.R. 8, but there is no affirmative demonstration in the record he was not. While the Mayor's Court may not be a court of record, Appellant could still have availed himself of an App.R. 9(C) statement or have otherwise presented evidence in the trial court to prove otherwise. In the absence of such, the presumption of regularity prevails.

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HON. WILLIAM B. HOFFMAN